

Certified
mail

Art Wittich
4452 Cascade Street
Bozeman, MT 59718
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COMMISSIONER OF
POLITICAL PRACTICES

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January 26, 2007

Commissioner Dennis Unsworth
Montana Office of Political Practices
P.O. Box 202401
1205 8th Avenue
Helena, MT 59620-2401

Re: Formal Complaint Enclosed

Dear Commissioner Unsworth,

Enclosed please find a formal complaint as well as a copy. Please date stamp the copy as being received and return in the enclosed self-addressed stamped envelope. Done 1/29/07

Should you have any questions or concerns about this, please do not hesitate to contact me.
Thank you.

Sincerely,



Art Wittich
AVW/llb

Encl.

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Commissioner Dennis Unsworth
Montana Office of Political Practices
P.O. Box 202401
1205 8th Avenue
Helena, MT 59620-2401

Re: Formal Complaint

Dear Commissioner Unsworth,

As per the following, I wish to submit a formal complaint to your office alleging violations of Montana Campaign Finance laws. This complaint is submitted in compliance with Montana statutes and 44.10.307, ARM. I was the Republican candidate for Senate District 32, and lost on November 7, 2006. My opponent (Larry Jent) and I ran a clean campaign without attacking each other. It was the exception to the rule in Gallatin County races.

I. Violators or Persons with Information Pertaining to Violations:

A. Violators:

Double Tree, Inc., 4080 S. 3rd Ave., Bozeman, MT 59715.

Utility Solutions, LLC, 495 Quail Run Rd., Bozeman, MT 59718.

Barbara Campbell, 4080 S. 3rd Ave., Bozeman, MT 59715 in her capacity as officer and member of each entity.

B. Additional Violators or Persons w/ Information Pertaining to Violations:

John Hulme c/o Century 21 Summit Realty, 1941 W. Main, Bozeman, MT 59718.

John Kauffman, Esq., 716 S. 20th Ave., Bozeman, MT 59718.

Matt Williams, Esq., 506 E. Babcock, Bozeman, MT 59715.

II. Factual Basis for Complaint:

On the day before the election, Monday, November 6, 2006 I received a call and learned that realtors in town were receiving a one-page letter, which began with "Vote Against Art Wittich" (see attached Exhibit A). As you can see, the letter was unsigned and did not include a disclaimer or even a return address. It clearly constitutes express advocacy against my campaign and violates laws pertaining to anonymous contributions or expenditures, disclaimers, reporting and corporate contributions. I also looked at the envelope and found out that there was no return address (see attached Exhibit B). I then called Mark Evans with Keller Williams Realty who confirmed that he too received such a letter, as did many agents in the Keller Williams office. I also confirmed with Tony Wastcoat at RCI Coldwell Banker that many agents there received a letter. I also confirmed with Sally Hickey with ERA Realty that many agents there had received the same letter. I also confirmed with Nancy Oaks at Prudential Real Estate that agents in their office also received the letter. I also confirmed with Heidi Parkes with Prudential Realty that she received the letter on Saturday, November 4, 2006 in her office mail (see attached various letters as Exhibit C). All letters were sent to work addresses, which corresponded to the Gallatin Association of Realtors mailing list.

I then spoke with Deanna at the Gallatin Association of Realtors, 151 Evergreen Suite C, Bozeman, Montana 59715, 406-585-0033. While she had not seen the letter, she said that the Gallatin Association of Realtors list exceeds 800 people. I then spoke with Donna Kostelecky, President of the Gallatin Association of Realtors, also with Century 21 Realty who confirmed that many realtors in town received the letter. The president-elect of the Gallatin Association of Realtors, Trish Bailey also called me apologizing that the letter went out under the Gallatin Association of Realtors mailing list. In order to attempt to mitigate the damage that this would do to the vote on the following day (if possible), Trish authorized the Gallatin Association of Realtors to send another email as a communication to their members later on Monday reminding them that the Association endorsed my candidacy for Senate District 32.

As you can see from the substance of the letter, I have represented a number of people in the Four Corners area opposed to a private water and sewer district and large commercial wells along the Gallatin River. In one of these cases (Lohmeier v. John Hulme and Four Corners Water and Sewer District), a counterclaim was filed on Thursday, October 26, 2006 and served on my office on Friday, October 27, 2006 (see attached Exhibit D). As you can see, the illegal campaign letter addressed these counterclaims specifically.

It is apparent from the postmark that the form letters were sent out one week later, on Friday, November 3, 2006. There are only a select few people who would have known about the counterclaim. Namely John Hulme (a licensed realtor with Century 21 and marketing agent for the subdivisions at Four Corners, as well as the President of the Water and Sewer District and self proclaimed public official), and Utility Solutions, LLC by and through their President, Barbara Campbell who was the one filing the counterclaims, by and through their counsel John Kauffman.

While I have no information Larry Jent knew about these letters, his law partner Matt Williams is co-counsel with Mr. Kauffman representing Utility Solutions, LLC in these cases. I have no knowledge that either Mr. Kauffman or Mr. Williams knew about or participated in their campaign activity, however, should an investigation determine a candidate or an agent of the committee was aware of the communications or suggested it be sent, this would constitute violations of Montana law pertaining to coordinated expenditures and excessive contributions as well as prohibited corporate contributions.

I later confirmed with Kate Reid that not only did the Realtors in the Association and multiple listing service received the letter, but also their non-realtor affiliates.

On Thursday, November 9, 2006 I received a call from Walt Williams, a reporter with the Bozeman Chronicle who asked me to comment on the "counterclaims that had been filed." I asked him how he knew about the counterclaims and he stated that Barbara Campbell called him and provided a "press release" on November 2nd, but the Chronicle decided not to run it until after the election. I asked Walt for a copy and he faxed it to me (see attached Exhibit E). As you can see, the fax stamp on the press release is from Double Tree, Inc. the subdivision development arm of Utility Solutions, LLC, both of whom are owned and controlled by Barbara Campbell.

You will also note that the press release is virtually identical to the form letter that went out with the exception of the headline "Vote Against Art Wittich." Clearly someone at Utility Solutions, LLC, Double Tree, Inc., Barbara Campbell, John Kauffman, Esq., John Hulme, or their agents sent out the form letter. Obviously, once some or all of them were not able to publicize this one-sided garbage in the paper, they took it upon themselves to publicize it through unsigned letters without a return address to everyone they could find.

I believe this letter directly affected the outcome of the election, and the votes against my candidacy.

It is not surprising that Utility Solutions, LLC or Double Tree, Inc. opposes my candidacy, as I included within my platform the need to start protecting our water flows (see Bozeman Daily Chronicle Ad attached as Exhibit F, and a door-to-door flyer referencing protecting land and water as Exhibit G).

In addition, Utility Solutions, LLC through their counsel Don MacIntyre had been working with the DNRC to propose legislation that would greatly change the basin closure law. Once a draft of this legislation became public and DNRC requested the Environmental Quality Council sponsorship of the legislation, I sent a letter on behalf of my clients opposing the legislation (see attached Exhibit H). Utility Solutions, LLC apparently found my candidacy a threat to their activities.

I have also since learned that John Hulme told someone that "he knew who sent the letter, but it was not me [him]."

III. Claims and Legal Reference Pertaining to Violations

Barbara Campbell, through Double Tree, Inc. and Utility Solutions, LLC [a manger operated LLC] or agents thereof prepared, printed, disseminated through the US postal service and other means a political communication expressly advocating against my candidacy in the Senate District 32 race. In doing so, Double Tree, Inc. and other entities, officers and agents committed numerous violations of Montana's campaign finance laws. A person who violates any of the provisions of Montana's campaign finance laws is subject to the civil penalty provisions of MCA § 13-37-128 which provides a penalty of \$500 or three times the amount of contribution or expenditure which ever is greater.

A. Express Advocacy

In applying Buckley v. Valeo, 424 U.S. 1 (1976); Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990); FEC v. Massachusetts Citizens for Life, Inc. 479 U.S. 238 (1986); and Faucher v. FEC, 928 F.2d 468 (1991), your office consistently maintains the standard that speech is "express" if it unmistakable and unambiguous and suggestive of only one plausible meaning and that speech is "advocacy" if there is a clear plea for action. Any reasonable person should be able to interpret communications as ads advocating the election or defeat of a candidate. As Exhibit A indicates there was an unmistakable and unambiguous plea for a vote against my candidacy under any of the standards relied upon by your office to make such determinations. Any reasonable person would not interpret the communication as anything else but expressly advocating my defeat.

B. Prohibition Against Anonymous Contributions and Expenditures

Montana Code Annotated § 13-35-225(1) provides, in relevant part, that:

13-35-225. Election materials not to be anonymous -- statement of accuracy. (1) All communications advocating the success or defeat of a candidate...through any ... direct mailing, poster, handbill...or other form of general political advertising must clearly and conspicuously include the attribution "paid for by" followed by the name and address of the person who made or financed the expenditure for the communication. In the case of a political committee, the attribution must be the name of the committee, the name of the committee treasurer, and the address of the committee or the committee treasurer.

Neither the mailing nor even the envelope provides any information about who paid for the mailing. Any address is not provided. There is no committee or treasurer named and therefore no treasurer's address. Taking into account staff time to prepare the mailing, use of equipment such as a computer, fax machine, printing, office supplies and postage preparing and distributing this piece for a mailing to over 800 people could exceed \$550. If the piece was prepared or reviewed by an attorney that figure could be even higher. Montana law allows for a fine of \$500 or three times the amount of the unlawful expenditure. MCA § 13-35-128. This results in an estimated fine of \$1,650.

C. Prohibition Against Corporate Contributions and Expenditures

Montana Code Annotated § 13-35-227 prohibits corporate contributions and expenditures in connection with candidate campaigns. As indicated in the cases cited above these prohibitions are consistently upheld and enforceable when applied to corporate expenditures by for-profit corporation in connection with candidate campaigns. Double Tree, Inc. was clearly involved in dissemination of the material. LLC's operated by managers rather than members are treated as corporations for the purposes of applying this prohibition. This results in another fine of \$1,650.

D. Failure to Provide Attribution on Election Materials

By making an expenditure and becoming a political committee Double Tree, Inc. Utility Solutions or others funding the express advocacy was required to follow the requirements of Montana's naming and labeling statute, MCA § 13-37-210. Exhibit A, the paid political statement in opposition to my candidacy was not properly labeled and the political committee is not properly identified. This results in another fine of \$1,650.

E. Failure to File Statements of Organization

Montana Code Annotated § 13-37-201 requires each political committee to file an organizational statement which certifies the appointment and address of a campaign treasurer. The organizational statement must be filed within 5 days of making an expenditure. The statement is to be filed with your office and the office of the election administrator where the committee is headquartered or where the election is held. MCA § 13-37-225. A check with your office and the Gallatin County elections office did not reveal any such statement being filed. The reasons for filing with your office and Gallatin County are separate and distinct and clearly delineated as requirements in the statute so failure to file each of the forms should be treated as separate violations of MCA § 13-37-201 and 13-37-225. This should result in a minimum fine of \$1,000.

F. Failure to Designate Campaign Depository

Montana Code Annotated § 13-37-205 requires each political committee to designate a campaign depository. Although the statement of organization required in MCA § 13-37-201 provides a manner in which this designation may be accomplished this is a distinct statutory requirement. There has been no designation thus MCA § 13-37-205 has been violated. This should be a minimum fine of at least \$500.

G. Failure to File Periodic Reports Pursuant to Statutory Requirements

The failure of the persons involved in preparing and disseminating Exhibit A to file any reports results in several other violations of Montana campaign finance laws, including violation of MCA: §13-37-225 (failure to file periodic reports); §13-37-226 (failure to timely file reports); § 13-37-228 (failure to report pursuant to covered time periods); and § 13-37-230 (manner in which expenditures are to be reported). These are four distinct statutes and should

result in separate penalties for the first three reporting violations of at least \$1,500, and \$1,650 for the failure to properly report the expenditure in accordance with § 13-37-230. Failure to file these reports should result in a fine of at least \$3,150 which could be compounded depending upon your determination of when reporting should have begun and the length of time before the law is eventually complied with.

Non-reporting of Independent Expenditures or In-kind Contributions

ARM 44.10.323 defines "independent expenditure" an expenditure for communications expressly advocating....the defeat of a candidate....which is not made with the cooperation or prior consent or in consultation with, or at the request or suggestion of, a candidate or political committee or an agent of a candidate or political committee. According to ARM 44.10.323(3) independent expenditures are required to be reported as provided in ARM 44.10.531. Pursuant to ARM 44.10.531(4), an independent expenditure shall be reported in accordance with the procedures for reporting other expenditures. "In addition, a person making an independent expenditure shall report the name of the candidate....the independent expenditure was intended to benefit." Not reporting this independent expenditure in compliance with the provisions contained in the ARM should result in an additional fine of \$1,650.

IV. Conclusion

This type of campaign material is cowardly, reprehensible and most importantly illegal. There are corporate actions and public officials interfering with an election, and a host of disclosure and reporting violations. As this complaint demonstrates Montana law deals harshly with these sorts of underhanded secretive campaign tactics. Even if coordination is lacking with respect to a political campaign the fines could total above \$11,000. Accordingly, I ask your office through the Department of Justice to begin an immediate investigation as to who sent this letter, and seek appropriate fines and penalties to the full extent of the law.

If you need any additional assistance in your investigation, please contact me. Thanks.

Sincerely,



Art Wittich

AVW/llb

Encl.

VERIFICATION

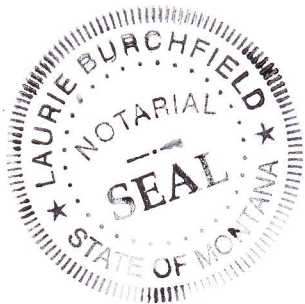
STATE OF MONTANA)
 : ss.
County of Gallatin)

Art Wittich, being first duly sworn, deposes and says as follows:

That he is the Complainant in the above entitled case, that he has read the complaint, knows the contents thereof, and that the facts and matters contained therein are true, accurate and complete to the best of his knowledge and belief. Further, as to any facts which are stated as facts, to which he has personal knowledge, the same are hereby verified as being true. Still further the signature on the Complaint is the signature of ART WITTICH.

Art Wittich
ART WITTICH

On this 26th day of January, 2007, before me, a notary public, personally appeared Art Wittich, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Laurie Burchfield
Laurie Burchfield
Notary Public for the State of Montana
Residing at Belgrade, MT
My commission expires 11/13/2007